

Senate Bill 503

By: Senators Hamrick of the 30th and Hill of the 4th

AS PASSED

AN ACT

To amend Chapter 21A of Title 15 and Title 17 of the Official Code of Georgia Annotated, relating respectively to judicial accounting and criminal procedure, so as to change certain provisions relating to the Georgia Public Defender Standards Council and the provision of legal services to indigent persons; to clarify that the application fee for indigent defense services is not a prerequisite to obtaining legal services; to provide for certain continuances; to provide that such fee may be paid as a condition of probation; to define an indigent person with respect to the federal poverty level; to provide for staggered terms for the councilmembers of the Georgia Public Defender Standards Council; to change certain provisions relating to the standards created by the Georgia Public Defender Standards Council; to change certain provisions relating to guidelines for determining indigency; to change certain provisions relating to the budget of the council; to provide that public defenders shall not be authorized to utilize a badge, shield, or similar item; to change certain provisions relating to public defenders; to change certain provisions relating to contracting with the Department of Administrative Services for personnel paid by local governments; to change certain provisions relating to the budget for the Office of the Georgia Capital Defender; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 21A of Title 15 of the Official Code of Georgia Annotated, relating to judicial accounting, is amended by striking subsections (b) and (e) of Code Section 15-21A-6, relating to additional filing fees and application fee for free legal services, and inserting in lieu thereof the following:

(b) Any person who applies for or receives legal defense services under Chapter 12 of Title 17 shall pay the entity providing the services a single fee of \$50.00 for the application for, receipt of, or application for and receipt of such services. The application fee may not be imposed if the payment of the fee is waived by the court. The court shall waive the fee

if it finds that the applicant is unable to pay the fee or that hardship will result if the fee is charged. If the application fee required by this subsection has not been paid or waived at the time the defendant is sentenced, the court shall impose such fee as a condition of probation.

(e) A public entity other than an entity providing legal defense services under Chapter 12 of Title 17 may charge, in addition to any other fee or surcharge authorized by law, a \$50.00 application fee unless waived by the court for inability to pay or hardship. If the application fee required by this subsection has not been paid or waived at the time the defendant is sentenced, the court shall impose such fee as a condition of probation. Any such fee shall be retained by the entity providing the services or used as otherwise provided by law and shall not be subject to payment to the authority or deposit into the state treasury.

SECTION 2.

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended in Chapter 10, relating to sentence and punishment, by adding a new Code section to read as follows:

17-10-8.1.

In any case in which a defendant receives legal defense services pursuant to Chapter 12 of Title 17 where the defendant has not paid the application fee required by Code Section 15-21A-6 and the court has not waived such fee at the time of sentencing, the court shall impose such fee as a condition of probation.

SECTION 3.

Said title is further amended by designating the existing portion of Code Section 17-8-26, relating to grounds for granting continuances when a party or a party's attorney is in attendance at the General Assembly, as subsection (a) and by inserting a new subsection (b) at the end of such Code section to read as follows:

(b) A continuance and stay shall also be granted for such other times as the member of the General Assembly or staff member certifies to the court that his or her presence elsewhere is required by his or her duties with the General Assembly.

SECTION 4.

Said title is further amended by striking Code Section 17-12-2, relating to definitions, and inserting in lieu thereof the following:

17-12-2.

As used in this chapter, the term:

(1) 'Assistant public defender' means an attorney who is employed by any circuit public defender or conflict defender office.

(2) 'Circuit public defender' means the head of a public defender office providing indigent defense representation within any given judicial circuit of this state.

(3) 'Circuit public defender office' means the office of any of the several circuit public defenders.

(4) 'Council' means the Georgia Public Defender Standards Council.

(5) 'Indigent person' or 'indigent defendant' means:

(A) A person charged with a misdemeanor, violation of probation, or a municipal, county, or juvenile offense punishable by imprisonment who earns or, in the case of a juvenile, whose parents earn, less than 125 percent of the federal poverty guidelines unless there is evidence that the person has other resources that might reasonably be used to employ a lawyer without undue hardship on the person or his or her dependents; and

(B) A person charged with a felony who earns or, in the case of a juvenile, whose parents earn, less than 150 percent of the federal poverty guidelines unless there is evidence that the person has other resources that might reasonably be used to employ a lawyer without undue hardship on the person or his or her dependents.

In no case shall a person whose maximum income level exceeds 150 percent of the federal poverty level or, in the case of a juvenile, whose household income exceeds 150 percent of the federal poverty level be an indigent person or indigent defendant.

(6) 'Public defender' means an attorney who is employed in a circuit public defender office or conflict defender office or who represents an indigent person pursuant to this chapter.

SECTION 5.

Said title is further amended by striking Code Section 17-12-3, relating to the Georgia Public Defender Standards Council's creation and membership, and inserting in lieu thereof the following:

17-12-3.

(a) There is created the Georgia Public Defender Standards Council to be composed of 11 members.

(b) Ten members of the council shall be appointed as follows:

(1) Two members shall be appointed by the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court of Georgia, and the Chief Judge of the Georgia Court of Appeals as further set forth in paragraph (2) of this subsection. The members of the council shall be individuals with significant experience working in the criminal justice system or who have demonstrated a strong commitment to the provision of adequate and effective representation of indigent defendants. The members shall serve terms of four years; provided, however, that the members appointed from the even-numbered judicial administration circuits shall serve initial terms of six years and thereafter shall serve terms of four years;

(2) The members appointed pursuant to paragraph (1) of this subsection shall be chosen so that each of the ten judicial administration districts in the state is represented and so that each appointing authority shall rotate the particular judicial administration district for which he or she is responsible for appointing. The appointments shall be as follows:

(A) For the initial appointments:

(i) The Governor shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2;

(ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial administration district 4;

(iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 5 and one person who resides in judicial administration district 6;

(iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8; and

(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10;

(B) For the first subsequent council appointments:

(i) The Governor shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial administration district 4;

- (ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 5 and one person who resides in judicial administration district 6;
 - (iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8;
 - (iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10; and
 - (v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2;
- (C) For the second subsequent council appointments:
- (i) The Governor shall appoint one person who resides in judicial administration district 5 and one person who resides in judicial administration district 6;
 - (ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8;
 - (iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10;
 - (iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2; and
 - (v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial administration district 4;
- (D) For the third subsequent council appointments:
- (i) The Governor shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8;
 - (ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10;

(iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2;

(iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial administration district 4; and

(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 5 and one person who resides in judicial administration district 6; and

(E) For the fourth subsequent council appointments:

(i) The Governor shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10;

(ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2;

(iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial administration district 4;

(iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 5 and one person who resides in judicial administration district 6; and

(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8.

All subsequent appointments shall continue on, with the entire cycle starting over again as specified in subparagraph (A) of this paragraph;

(3) In addition, the eleventh member shall be one circuit public defender who shall serve on the council. After the initial appointments as set forth in paragraph (4) of this subsection, the circuit public defender to serve on the council shall be elected by a majority vote of all the circuit public defenders. The circuit public defender councilmember shall serve terms of two years;

(4) All initial appointments shall be made to become members of the council on July 1, 2003, and their successors shall become members of the council on July 1 following their appointment. The initial appointees from the even-numbered judicial administration

circuits shall serve until June 30, 2009. Notwithstanding the provisions of paragraph (3) of this subsection, the initial member representing the circuit public defenders shall be made by the Supreme Court of Georgia. The person representing the circuit defender position on the initial council shall be engaged on a full-time basis in the provision of criminal defense to the indigent;

(5) Any vacancy for a member appointed pursuant to paragraphs (1) and (2) of this subsection shall be filled by the appointing authority, and such appointee shall serve the balance of the vacating member's unexpired term; and

(6) Any vacancy for a member appointed pursuant to paragraph (3) of this subsection shall be the successor to the circuit public defender as set forth in subsection (d) of Code Section 17-12-20.

(c) In making these appointments, the appointing authorities shall seek to identify and appoint persons who represent a diversity of backgrounds and experience and shall solicit suggestions from the State Bar of Georgia, state and local bar associations, the Georgia Association of Criminal Defense Lawyers, the councils representing the various categories of state court judges in Georgia, and the Prosecuting Attorneys Council of the State of Georgia, as well as from the public and other interested organizations and individuals within the state. The appointing authorities shall not appoint a prosecuting attorney as defined in paragraph (6) of Code Section 19-13-51, any employee of a prosecuting attorney's office, or an employee of the Prosecuting Attorneys Council of the State of Georgia to serve on the council.

(d) This Code section shall become effective on July 1, 2003, for purposes of making the initial appointments to the council.

SECTION 6.

Said title is further amended by striking paragraph (8) of subsection (b) of Code Section 17-12-8, relating to approval by the Georgia Public Defender Standards Council of programs for representation of indigents and development of standards, and inserting in lieu thereof the following:

(8) Standards for collecting the costs of legal representation and related services;

SECTION 7.

Said title is further amended by striking subsection (a) of Code Section 17-12-24, relating to guidelines for determining indigency, and inserting in lieu thereof the following:

(a) The circuit public defender and any other person or entity providing indigent defense services shall determine the financial eligibility of any person or juvenile arrested, detained, or charged in any manner in accordance with the definition of an indigent person set forth in Code Section 17-12-2 that would entitle him or her to representation under this chapter.

SECTION 8.

Said title is further amended by striking subsection (b) of Code Section 17-12-26, relating to the budget of the council, and inserting in lieu thereof the following:

(b) The budget of the council shall include the budget of all circuit public defenders and other offices and entities, including conflict defender offices and appointed attorneys providing indigent defense representation under the authority of this article and the Office of the Georgia Capital Defender and the office of the mental health advocate.

SECTION 9.

Said title is further amended by striking subsection (g) of Code Section 17-12-27, relating to the appointment of assistant public defenders, salary, and promotions, and inserting a new subsection (g) to read as follows:

(g) All full-time state paid employees of the office of the circuit public defender shall be state employees in the unclassified service of the State Merit System of Personnel Administration with all benefits of such appointed state employees as provided by law. A circuit public defender, assistant public defender, or local public defender may be issued an employee identification card by his or her employing agency; provided, however, no employer of any such public defender shall issue nor shall any public defender display, wear, or carry any badge, shield, card, or other item that is similar to a law enforcement officer's badge or that could be reasonably construed to indicate that the public defender is a peace officer or law enforcement official.

SECTION 10.

Said title is further amended by striking Code Section 17-12-32, relating to contracting with the Department of Administrative Services for personnel paid by local governments, and inserting in lieu thereof the following:

17-12-32.

The governing authority of any county or municipality within the judicial circuit which provides additional personnel for the office of circuit public defender may contract with

the council to provide such additional personnel in the same manner as is provided for state paid personnel in this article. Any such personnel shall be considered state employees and shall be entitled to the same fringe benefits as other state paid personnel employed by the circuit public defender pursuant to this article. The governing authority of such county or municipality shall transfer to the council such funds as may be necessary to cover the compensation, benefits, travel, and other expenses for such personnel.

SECTION 11.

Said title is further amended by striking Code Section 17-12-124, relating to the budget for the Office of the Georgia Capital Defender, and inserting in lieu thereof the following:

17-12-124.

The council shall prepare an annual budget showing all anticipated expenses of the office for the following fiscal year, which shall be the same as the fiscal year of this state. The budget shall be submitted by the capital defender to the council and for Fiscal Year 2005 and thereafter shall include the proposed budget for representation of all indigent persons accused of a capital felony for which the death penalty is or is likely to be sought.

SECTION 12.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 13.

All laws and parts of laws in conflict with this Act are repealed.